

Supreme Court, U.S.

FILED

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No. OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

KYLE G. BROWNFIELD, PETITIONER

v.

METROPOLITAN LIFE INSURANCE COMPANY

*PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

SUPPLEMENTAL APPENDIX

KYLE G. BROWNFIELD

pro se

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9a
No. 03-280

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

KYLE G. BROWNFELD,
Plaintiff

v.

METROPOLITAN LIFE INSURANCE COMPANY,
Defendant.

Filed 4/09/2004

FINDINGS OF FACT AND CONCLUSIONS OF
LAW AFTER TRIAL ON ADMINISTRATIVE
RECORD

I.
INTRODUCTION

On November 26, 2003, a bench trial was held based on the administrative record. The Court took the matter under submission after ordering the parties to prepare, serve, and lodge proposed findings of fact and conclusions of law. On December 5, 2003, plaintiff lodged her proposed findings of fact and conclusions of law and a re-submission of portions of the administrative record. On December 8, 2003, defendant lodged its proposed findings as well as clear copies of Bates-stamped documents 100370 through M100378.

Having read and considered the parties' papers

submitted before and after trial, as well as the arguments of counsel at trial, the Court finds that defendant did not abuse its discretion when it denied plaintiff's long-term disability benefits.

The disability plan at issue is an employee welfare benefit plan as defined by the Employee Retirement Income Securities Act (ERISA). 29 U.S.C. § 1001, et seq. This plan confers discretionary authority upon Metropolitan Life Insurance Company ("MetLife" or "defendant") as the Plan Administrator. Under such circumstances, the administrator's decision to deny benefits is, absent a serious conflict of interest, reviewed for an abuse of discretion. The Court finds no conflict of interest. As a result, the Court confines its review to the administrative record which was before the administrator when it denied plaintiff's request for benefits.

II. FINDINGS OF FACT

Consistent with the foregoing, the Court finds the facts as follows.

1. Eastman Kodak Company ("Kodak") sponsors a long-term disability plan (the "Plan") for the benefit of its employees. The Plan provides in part as to an employee's disabling condition:

- a. The condition results in a Participant's total and continual inability to engage in gainful work; with or without reasonable accommodation; and
- b. Due to the condition, the Participant remains under the care of a licensed physician. "Gainful work" means

paid employment for which a person is, or becomes, reasonably qualified by education, training, or experience, and which is more than transitory in nature, as determined by the claims Administrator.

2. The Plan also provides that the Plan Administrator and Claims Administrator each, with respect to their respective duties and responsibilities, shall have full discretionary authority in all matters related to the discharge of their duties and responsibilities and the exercise of their authority including, without limitation, the construction of the terms of the Plan and the determination of eligibility for coverage and benefits. The Plan specifically states that judicial reversal of claims decisions is predicated upon a finding that the decision was arbitrary and capricious.

3. The version of the Plan containing the language referred to in the previous paragraph was effective July 1, 2002.

4. The Plan that was effective on January 1, 1997, but was subsequently replaced by the version of the Plan that was effective July 1, 2002, vested the administrator with discretion to determine eligibility for plan benefits as did the 2002 Plan.

5. MetLife is not the funding source of the Plan. Pursuant to the Plan, "benefits shall be paid from the general assets of the company except insofar as Benefits are paid from a trust established in accordance with Section 10.3(b)."

6. The Administrative Services Agreement between MetLife and Kodak required Kodak to establish a special bank account to serve as the funding source of

the Plan.

7. Pursuant to the Plan, it is plaintiff's burden to prove and provide evidence that she is disabled. The Plan further requires participants to submit, upon request, proof of the continuance of disability.

8. Plaintiff Kyle Brownfield ("plaintiff" or "Brownfield") was employed by Kodak from September 27, 1976, to May 2, 2002. Plaintiff was laid off on March 4, 2002, due to a "downsizing initiative."

9. Plaintiff's last position was as an as "Account Manager, Large Format Inkjet," Primarily a salesperson, plaintiff's job was relatively sedentary. Her job also required some travel via automobile and airplane.

10. Plaintiff alleges that she is disabled due to "degenerative disc disease," "thoracic and lumbar back pain," "constant muscle spasms" and "spastic bladder syndrome."

11. On June 14, 2001, plaintiff presented to Dr. Karen L. Noblett of the University of California, Irvine Women's Healthcare Center with "significant [urinary] urgency/frequency and nocturia getting up 4 to 6 times at night." Dr. Noblett found that plaintiff had a normal screening neurologic exam.

12. On August 3, 2001, plaintiff presented to Dr. Sten Kramer of the Newport Coast Medical center with low back pain and left leg pain. Dr. Kramer performed an epidural steroid injection. Dr. Kramer determined that plaintiff suffered from; (1) multilevel degenerative disc

disease of the lumbar spine, and (2) acute left sciatica. Dr. Kramer concluded that plaintiff had tolerated the procedure well.

13. An August 9, 2001 medical report states that plaintiff reported marked improvement in low back pain.

14. On August 15, 2001, Dr. I.A. Hirbawi performed an MRI of plaintiff's lumbar spine. Dr. Hirbawi found normal anatomical alignment of the lumbar spine. He also stated that plaintiff had a mild congenital hypoplasia of the L4 and L5 vertebral bodies which appeared partially fused and normal bone marrow signal intensity.

15. On August 23, 2001, plaintiff returned for her follow up examination with Dr. Kramer. He reached the same impression as reported on August 9, 2001. Plaintiff continued to describe low back pain without radicular pain and Dr. Kramer recommended a lumbar stabilization program as part of a physical therapy regimen, that plaintiff discontinue taking ibuprofen, and that she return for follow up in two weeks.

16. On September 6, 2001, plaintiff returned for another follow up examination with Dr. Kramer. Plaintiff reported improvement in her lower back pain, but continued to experience mid-back pain and that she attended physical therapy and continued to see her chiropractor almost daily. Dr. Kramer diagnosed (1) chronic discogenic neck pain, (2) degenerative disc disease/ spondylosis 3-4 and C4-5, (3) chronic thoracic strain, (4) multilevel degenerative disc disease/spondylosis of the thoracic spine, (5) discogenic

low back pain and (6) left paracentral disc bulge L5-S1 and hypoplastic fusion L4-5. He recommended that plaintiff continue physical therapy but discontinue chiropractic care and that she return for follow up in two weeks. This same diagnosis was indicated by Dr. Kramer on September 19, 2001. Dr. Kramer also recommended that plaintiff have an MRI thoracic spine.

17. On September 28, 2001, Dr. Jamshid Tehranzadeh, performed an MRI of plaintiff's thoracic spine. Dr. Tehranzadeh diagnosed degenerative disc disease and bulging annulus fibrosis at T6-7, T8-9, T10-11 and T11-12 with posterior thickening of the ligamentum flavum. He found a slight impingement of the bulging annulus at T6-7 over the spinal cord. He also noted Schmorl's nodes at several levels including T10, T11 and T12, which may suggest mild Schuermann disease.

18. On October 3, 2001, plaintiff returned for a follow up examination with Dr. Kramer, whose diagnosis remained consistent with the September 6, 2001 attending physician's report. Plaintiff continued to report improvement in low back pain, but described sharp pain throughout her mid-back region.

19. On October 10, 2001, Dr. Paicius administered a thoracic epidural steroid injection. On October 22, 2001, plaintiff returned to Dr. Kramer for a follow up examination reporting "marked improvement in mid-back pain following the thoracic injection done two weeks ago." Dr. Kramer's diagnosis remained consistent with that of his September 6, 2001, examination.

20. On March 5, 2002, Dr. Kramer completed an

attending physician's statement of functional capacity. His diagnosis was "chronic discogenic LBP [lower back pain], DDD [degenerative disc disease] C3-4, LS disc bulge" and "thoracic strain." He noted that plaintiff "continues to complain of left buttock pain extending up the left flank." As to objective findings, Dr. Kramer only noted "Palpation over the thoracolumbar spine is diffusely tender" and referred to his office notes. He noted that plaintiff could lift 0-15 pounds up to 1/3 of her workday. He also stated that plaintiff could walk 10-15 minutes, sit 15 minutes and stand 15 minutes. He concluded that plaintiff was totally disabled from her own occupation and any occupation, but could resume work activities in 6 months.

21. In her Personal Profile Evaluation Form dated March 1, 2002, plaintiff states that she participated in physical therapy three times a week.

22. A job description completed by plaintiff's employer states that her job as an Account Manager, Large Format Inkjet, requires sitting and standing 20-80% of the day and requires walking 20 or less. Plaintiff's employer noted that, as primarily a salesperson, the job requires travel to customer sites via automobile and airplane depending on proximity. Daily verbal and or written communication is essential. Product sampling and demonstration is also required at customer sites or at trade shows. At most, plaintiff's job requires that she lift 0-15 pounds less than 20 of the day.

23. Plaintiff reports attending physical therapy three times per week. She submitted the reports from the physical therapy treatments to MetLife. However, the reports provide no clinical data regarding plaintiff's purported condition and only document plaintiff's

subjective complaints of pain and physical therapy administered to help treat that pain.

24. On April 4, 2002, MetLife referred plaintiff's claim to MetLife's in-house nurse consultant, K. Buck. On April 9, 2002, Ms. Buck conducted a telephone interview with plaintiff.

25. On April 9, 2002, Buck concluded that, in her opinion, the objective findings in the medical records did not correspond with plaintiff's complaints. Thus, she concluded that the objective medical information available in plaintiff's medical records did not support a continued finding of disability.

26. On May 1, 2002, MetLife wrote a letter to plaintiff which denied her claim for long-term disability benefits. The letter explained that it had reviewed her eligibility for long-term benefits and that, based on the medical information provided, there was a lack of evidence of a severe condition that would render her disabled as defined by the Plan. MetLife received plaintiff's July 22, 2002, appeal of this decision on August 1, 2002. Plaintiff questioned why the condition of her SI joint was not addressed and relied on the fact that she had been awarded social security. On August 5, 2002, MetLife wrote plaintiff and acknowledged receipt of the appeal. In that letter, MetLife requested that plaintiff submit additional medical evidence in support of her position within 180 days from her receipt of the notice of denial of her claim.

27. On May 10, 2002, Buck called and spoke with Dr. Kramer. During this conversation he indicated that he was personally involved in plaintiff's case due to his

relationship with her husband. He further stated that there was no objective medical evidence to support plaintiff's complaints of back pain. 28. On May 30, 2002, plaintiff returned for a follow up examination with Dr. Kramer, whose diagnosis remained consistent with the September 6, 2001, attending physician's report, except that he now also diagnosed plaintiff as suffering from chronic left SI joint dysfunction. He noted that plaintiff reported considerable improvement in low back pain and left buttock pain for approximately two weeks following left SI joint Prolotherapy done on May 10, 2002. However, he stated that over the last two days her symptoms have been progressively worsening.

29. On June 13, 2002, plaintiff returned for a follow up examination with Dr. Kramer, whose diagnosis remained consistent with the May 30, 2002 attending physician's report. Dr. Kramer noted that plaintiff reported significant improvement in low back pain and general feelings of well being and that she was using significantly lower doses of medications.

30. On July 25, 2002, plaintiff returned for a follow up examination with Dr. Kramer, whose diagnosis remained consistent with the May 30, 2002 attending physician's report, except that he also added a diagnosis of "spastic bladder syndrome." Although Dr. Kramer for the first time diagnosed spastic bladder syndrome, it appears from his report that he did not perform any physical examination which would reveal that condition. It appears that his diagnosis of that condition is based solely on Plaintiff's self-diagnosis.

31. In an August 14, 2002 letter "to whom it may

concern," Dr. Chin, who had removed a neural fibrous mass from plaintiff's left foot on July 12, 2002, explained that plaintiff had requested to have corrective surgery for her right bunion in November, 2002. Dr. Chin did not indicate that the surgery would render Plaintiff disabled and the healing time from such a procedure is typically eight weeks.

32. On October 30, 2002, MetLife referred plaintiff's file to another in-house nurse consultant, Blenda Wilson, for her review. On September 4, 2002, Ms. Wilson concluded that the medical information did not support a severity of impairment which prevented plaintiff from doing the light activities of her job.

33. On September 11, 2002, MetLife referred plaintiff's file to two independent physician consultants specializing in urology and orthopedic surgery for their review regarding plaintiff's restrictions and limitations. In the inquiry forms to the physician consultants, defendant specified that its focus was on defining plaintiff's level of functionality and abilities.

34. MetLife asked the physician consultants to provide responses to the following questions: A. Does the available medical documentation support an impairment of such severity that would cause the claimant's inability to function at any gainful employment? B. If the Answer to A is yes, please explain how the medical documentation supports an impairment and advise what impairments the claimant has. C. If the answer to A is no, please advise what documentation is lacking to support an impairment.

35. On October 1, 1999, Dr. Richard A. Silver, Board